ORDINANCE NO. 11-54

ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AUTHORIZING THE MAYOR AND THE ACTING CITY CLERK, AS ATTESTING WITNESS, ON BEHALF OF THE CITY, TO ENTER INTO A LOAN AGREEMENT WITH BANK of AMERICA, N.A., PROVIDING FOR A BORROWING BY THE CITY FROM BANK OF AMERICA, N.A. OF AN AMOUNT NOT TO EXCEED $16,650,000 TO PROVIDE FUNDS TO REFINANCE THE CITY'S BORROWING FROM THE FLORIDA MUNICIPAL LOAN COUNCIL SERIES 1999 BONDS AND TO PAY INTEREST ON THE LOAN FOR UP TO THREE YEARS; PROVIDING FOR THE SALE AND ISSUANCE OF THE CITY'S PROMISSORY NOTE, SERIES 2011, IN THE PRINCIPAL AMOUNT NOT TO EXCEED $16,650,000 AND AWARDING SUCH NOTE TO BANK OF AMERICA, N.A. BY NEGOTIATED SALE; DESIGNATING SUCH NOTE AS "CITY OF HIALEAH TAXABLE REVOLVING LINE OF CREDIT NOTE, SERIES 2011"; COVENANTING TO BUDGET AND APPROPRIATE LEGALLY AVAILABLE NON AD VALOREM REVENUES, AS THE SOURCE OF REPAYMENT OF THE NOTE; DELEGATING TO THE MAYOR THE AUTHORITY TO FINALIZE THE TERMS AND CONDITIONS OF THE NOTE INCLUDING, WITHOUT LIMITATION, THE MATURITY DATE, PRINCIPAL AMOUNT AND INTEREST RATE THEREON; AUTHORIZING THE EXPENDITURE OF NOT TO EXCEED $15,000 FOR BANK ATTORNEY'S FEES; AND FURTHER AUTHORIZING THE EXECUTION OF ANY AND ALL DOCUMENTS IN FURTHERANCE THEREWITH; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Hialeah has determined that it can achieve debt service savings by refinancing its obligations (the "FMLC Loan") to the Florida Municipal Loan Council ("FMLC") in connection with FMLC's Series 1999 Revenue Bonds; and

WHEREAS, Bank of America, N.A. (the "Bank") has offered to provide the City a term loan on terms that are advantageous to the City to enable the City to refinance the FMLC Loan and provide the City with an upfront cash payment; and

WHEREAS, it is determined to be in the best interest of the City to proceed with the term loan from the Bank.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: The facts and recitations contained in the preamble to this ordinance are hereby adopted and incorporated by reference as if fully set forth herein.

Section 2: The City of Hialeah, Florida hereby authorizes the Mayor and the Acting City Clerk, as attesting witness, on behalf of the City, to enter into a Loan Agreement with the Bank (the "Agreement"), providing for a term loan (the "Loan") to the City in an amount not to exceed $16,650,000. The Loan will mature on April 1, 2019 (the same date on which the FMLC Loan matures), will be payable in installments of principal and interest due on April 1, 2012 and each April 1 and October 1 thereafter, and will have such other terms and conditions as shall be consistent with the terms and conditions presented by the Bank and attached hereto as Exhibit A. The scheduled principal and interest payments on the loan will be as close to as practical, but may not exceed $1,224,775.84, which is the average of the remaining payments on the FMLC Loan from and including April 1, 2012 through and including April 1, 2019. The principal amount of the FMLC Loan will be prepaid so as to discharge the City's obligations thereunder as of October 1, 2011. Any proceeds of the Loan in excess of the amount required to retire the FMLC Loan on October 1, 2011 shall be allocated to the payment of costs of issuance and to interest accruing on the Loan for a period of not exceeding three years and shall be deposited in the general fund of the City upon receipt.

Section 3: The obligation of the City to repay the Loan will be evidenced by the City's "Promissory Note, Series 2011" (the "Note"), the terms of which shall be as described in Section 2 hereof. The City will covenant to budget and appropriate from legally available non ad valorem revenues amounts sufficient to pay the amounts due under the Note as the same become due, as more particularly described in the Loan Agreement. Because of the nature of the Note and the prevailing market conditions, the negotiated sale of the Note to the Bank is hereby found to be in the best interests of the City.

Section 4: The City delegates to the Mayor the authority to finalize the terms and conditions of the Loan Agreement and Note, including, without limitation, the maturity date, principal amount and interest rate thereon, and authorizes the execution of any and all documents in furtherance therewith, provided that the terms and conditions of the Loan Agreement and Note and any such other documents shall not be inconsistent with the provisions of this Ordinance .

Section 5: The City authorizes the payment of the Bank's attorney's fee of $15,000.00.

Section 6: **Repeal of Ordinances in Conflict.**

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 7: **Penalties.**

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be assessed a civil penalty not to exceed $500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty described above, the City may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

Section 8: **Severability Clause.**

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 9: **Effective Date.**

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

PASSED and ADOPTED this 9th day of August, 2011.

Isis Garcia-Martinez
Council President

THE FOREGOING ORDINANCE
OF THE CITY OF HIALEAH WAS
PUBLISHED IN ACCORDANCE
WITH THE PROVISIONS OF
FLORIDA STATUTE 166.041
PRIOR TO FINAL READING.

Attest:

Approved on this 10 day of August, 2011.

David Concepcion, Acting City Clerk

Mayor Carlos Hernandez

Approved as to form and legal sufficiency:

William Grodnick

William M. Grodnick, City Attorney

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Ordinance was adopted by a unanimous vote with Councilmembers, Caragol, Casals-Muñoz, Cue-Fuente, Garcia-Martinez, Gonzalez, Hernandez and Yedra voting "Yes".

PROPOSED TERMS AND CONDITIONS

Borrower: City of Hialeah, Florida

Loan: Not to exceed $19,000,000 Non Bank Qualified Tax-exempt

Purpose: The purposed of the loan is to refund the City's Loan with the Florida Municipal Loan Council related to the 1999 FMLC revenue bonds.

Repayment: Interest shall be paid semi annually on each April 1 and October 1 beginning October 1, 2011. Principal shall be due annually on each April 1 beginning April 1, 2011. Principal shall amortize in such amounts to produce level annual debt service during the term of the loan. All interest shall be calculated based on a 30/360 day count.

Maturity: Option of following:

1) Existing maturity date of April 1, 2019
2) Extend the maturity date to April 1, 2026
3) Refund the balance of the existing bonds with a maturity date not to exceed April 1, 2026 and add new money as a separate note with a matuity not to exceed April 1, 2031

*Sample amortization schedules have been attached as **Exhibit A** based on the indicative interest rates provided below.

Interest Rate: An indicative bank qualified tax exempt rate for the proposed transaction as of July 13, 2011 is as follows:

Maturity date of April 1, 2019 – Indicative rate of 2.74%
Maturity date of April 1, 2026 – Indicative rate of 4.00%
Maturity date of April 1, 2031 – Indicative rate of 4.40%

The actual rate for the loan shall be locked in two days prior to closing based on the maturity dates as selected by the City. The City may have the option to lock in a rate earlier than two days prior to closing by executing a rate lock agreement similar to **Exhibit B**.

All interest rates shall be set based on the following formula:

<u>Maturity date of April 1, 2019</u>: Rate shall be set based on the sum of 66% of the 4 year Interest Rate Swap as published in the Federal Reserve Statistical Release H.15 plus 180 basis points.

<u>Maturity date of April 1, 2026</u>: Rate shall be set based on the sum,of 66% of the 8 year Interest Rate Swap as published in the Federal Reserve Statistical Release H.15 plus 224 basis points.

Maturity date of April 1, 2031: Rate shall be set based on the sume of 66% of the 10 year Interest Rate Swap as published in the Federal Reserve Statistical Release H.15 plus 238 basis points.

If the term of the Interest Rate Swap as indicated in the formulas above is not published in Release H.15, the Interest Rate Swap Rate will be determined by linear interpolation between the yields reported in Release H.15. If for any reason the Release H.15 is no longer published, the Bank shall select a comparable publication to determin the Interest Rate Swap Rate.

This pricing formulas quoted above are good only if the loan closes within 60 days of the date hereof. After that date, the formula is subject to change at the Bank's sole discretion.

The interest rate quoted above assumes that the loan will be a non bank qualified tax exempt obligation and will be subject to a legal opinion as to the tax exempt status of the loan which is acceptable to the Bank and its counsel. In the event it is determined that the loan is taxable, standard gross up provisions shall apply.

Security: The loan shall be secured by a covenant to budget and appropriate by the City. The City shall appropriate in its annual budget, from Non-Ad Valorem Revenues lawfully available to the City in each fiscal year, amounts sufficient for the payment of principal and interest on the note when due. All security language shall be acceptable to the Bank and its counsel. The Bank's standared CBA language is attached as **Exhibit C**.

The debt shall be subject to an anti dilution test which generally shall state that prior to the issuance of additional debt secured by non ad valorem revenues, legally available non ad valorem revenue (average for prior two years), after deducting essential governmental services not supported by ad valorem revenues, must cover current and projected maximum annual debt service secured by such revenues at a coverage ratio of 1.50x and the projected maximum annual debt service shall not exceed 20% of Governmental Fund. All final definitions must be acceptable to the Bank and its counsel.

Pre-payments: The loan shall be subject to a prepayment penalty if paid prior to the maturity. The prepayment language is provided in **Exhibit D** attached to this term sheet.

Financial Information: During the term of the loan, the Borrower shall provide to Bank annually, within 270 days following end of the Borrower's fiscal year, the

Borrrower's annual financial statements, prepared in accordance with GAAP and audited by an independent CPA.

Documentation/ Closing: All legal documentation must be acceptable to the Bank and its counsel. The City will have the option to have the loan documented by the Bank's attorney or its bond counsel. The City shall pay for all legal cost associated with document preparation and the Bank's review of such documents. If the Bank's counsel prepares documents and renders the tax opinion the fee will be $15,000. If the City's bond counsel prepares the documents and renders the tax opinion Bank's counsel fee will be $4,500.

Other:

This is a term sheet and not intended to be all inclusive. The actual loan documents shall include other terms and conditions customary for the proposed transaction. These shall include but will not be limited to provisions that upon the occurrence of an event of default the Bank may accelerate the maturity of the loan, may charge a default interest rate equal to the maximum rate permitted by law, and may impose a late payment fee of 4% of any amount not paid within 15 days of the due date. In addition, the loan documents will include a waiver of jury trial and mandatory arbitration provision. If the interest on the loan becomes subject to federal income taxation, the Bank's standard "gross-up" provision will apply, and among other things, the interest rate will increase to the rate 154% of the otherwise applicable rate.

Expiration of Terms And Conditions: Consideration of financing based on the terms and conditions presented in this term sheet shall automatically expire 60 days from the date herein. The Bank reserves the right to terminate, reduce or otherwise amend the tems if the subject transaction is not closed within 60 days of the date herein.

EXHIBIT A

Exhibit B

Rate Lock Agreement

1. The City of Hialeah, Florida (the "City") has requested Bank of America, N.A. (the "Bank") to loan (the "Loan") $________ to the City. The Loan would be funded on or before _________ (the "Closing Date"), would bear interest calculated on the basis of a 360 day year consisting of twelve thirty day months, payable in arrears on October 1, 2011 and each April 1 and October 1 thereafter, would be due in principal installments due on October1 of such years andin such amounts as set forth on Schedule __ hereto, would mature on ______ (the "Maturity Date"), would and would have such other terms and conditions set forth in the attached letter.

2. The City desires to obtain the agreement of the Bank that the Loan, if completed, will bear an interest rate locked in by the Bank at this time. In response to the City's request, the Bank has agreed to lock in a fixed rate (the "Rate") for the Loan of ___% per annum.

3. The City understands that, if the Loan is not completed during the period beginning on the date hereof and ending at 5:00 p.m. Eastern Time on ________ (the "Closing Period"), or if the Loan is made in a lesser amount than specified above, the Bank may suffer breakage costs and other losses, expenses and liabilities, including lost revenue and lost profits, as a result of having locked in the interest rate in advance. Accordingly, in consideration of the Bank's agreement to lock in the Rate, the City agrees to pay to the Bank a breakage fee as provided herein in the event the Loan is not closed (or is closed in an amount less than $__________) during the Closing Period for any reason other than the Bank's refusal to complete the Loan having the terms and conditions as set forth herein and in the attached letter. Once the Loan is completed during the Closing Period and in the amount of $__________, this Agreement will terminate.

4. The breakage fee will be determined for each Unfunded Amount as follows:

(i) The Bank will first determine the amount of interest which would have accrued each month for the Unfunded Amount had it remained outstanding from the Closing Date until the Original Payment Date using the Rate.

(ii) The Bank will then subtract from each monthly interest amount determined in (i), above, the amount of interest which would have accrued on the Unfunded Amount if it were reinvested from Closing Date through the Original Payment Date, using the Treasury Rate.

(iii) If (i) minus (ii) is greater than zero, the Bank will discount the monthly differences to the Closing Date using the Treasury Rate as the discount rate. This result will be the breakage fee.

The following definitions will apply to the calculation of the Prepayment Fee:

(i) "Unfunded Amount" means, as to each Original Payment Date, any portion of the principal amount of the Loan for sucgh date as set forth on Schedule 1 which is not funded during the Closing Period. For this purpose, Unfunded Amounts shall be determined to apply to the Original Payment Dates in the inverse order of their dates (that is, to the latest date first).

(ii) "Original Payment Date" means the dates set forth on Schedule 1 hereto.

(iii) "Treasury Rate" means the yield on the Treasury Constant Maturity Series with maturity equal to the Maturity Date (calculated as of the Closing Date in accordance with accepted financial practice and rounded to the nearest quarter-year), as reported in Federal Reserve Statistical Release H.15, Selected Interest Rates of the Board of Governors of the Federal Reserve System, or any successor publication. If no maturity exactly corresponding to such Original Payment Date appears in Release H.15, the Treasury Rate will be determined by linear interpolation between the yields reported in Release H.15. If for any reason Release H.15 is no longer published, the Bank shall select a comparable publication to determine the Treasury Rate.

5. The City agrees that the Breakage Fee represents a reasonable estimate of the breakage costs and other losses, expenses and liabilities, including lost revenue and lost profits, that the Bank may suffer if the Loan does not close during the Closing Period. The City agrees that the Bank's willingness to lock in the Rate in advance of the Closing Period is sufficient consideration for the City's agreement to pay the Breakage Fee.

6. This Agreement shall be governed by Florida law. Any amount due under this Agreement which is not paid upon demand by the Bank shall bear interest until paid at the Rate plus five percentage points. Any disputes between the parties concerning this Agreement, at the election of any party, will be resolved by binding arbitration according to the applicable rules and procedures for the arbitration of disputes of the American Arbitration Association or any successor thereof. The prevailing party in any arbitration or litigation will be entitled to its reasonable attorneys' fees, including the allocated cost of in-house counsel.

Dated ________ __, 2011.

Bank of America, N.A.

By:______________________________________
Name: Holly L. Kuhlman
Title: Senior Vice President

City of Hialeah, Florida

By:______________________________________
Name:
Title:

EXHIBIT C

The City covenants that, so long as the Note shall remain unpaid or any other amounts are owed by the City under the Note, it will appropriate in its annual budget, by amendment, if required, from the Available Non Ad Valorem Revenues, amounts sufficient to pay the principal of and interest on the Note and other amounts owed thereunder as the same shall become due. In the event that the amount previously budgeted for such purpose is ever insufficient to pay such principal and interest on the Note and other amounts owed thereunder, the City covenants to take action to amend its budget as soon as reasonably practicable so as to budget and appropriate an amount from the Available Non Ad Valorem Revenues sufficient to pay such debt service on the Note and such other amounts. The covenant to budget and appropriate does not create a lien upon or pledge of the Non Ad Valorem Revenues. Such covenants to budget and appropriate from Available Non Ad Valorem Revenues shall be cumulative to the extent not paid and shall continue until Available Non Ad Valorem Revenues sufficient to make all required payments have been budgeted, appropriated and used to pay such debt service on the Note and such other amounts.

Notwithstanding the foregoing covenant, the City does not covenant to maintain any service or programs now provided or maintained by the City which generate Non Ad Valorem Revenues.

"Available Non Ad Valorem Revenues" means all Non Ad Valorem Revenues (a) other than (i) any revenues which are restricted by a contract in existence on the date hereof, or created subsequent to the date hereof in connection with the incurrence of debt permitted hereby, from being used to pay principal and interest on the Note, (ii) any revenues which are prohibited by a general or special law of the State in existence on the date hereof from being used to pay principal and interest on the Note and (iii) any source of Non Ad Valorem Revenue which is created after the date hereof and which is prohibited by a general or special law of the State from being used to pay principal and interest on the Note, and (b) to the extent, and only to the extent, necessary to avoid a violation of Article VII, Section 12 of the Florida Constitution, subject to the prior payment of essential governmental services of the City.

"Non Ad Valorem Revenues" means all revenues of the City not derived from ad valorem taxation.

Exhibit D:
Muni Prepayment Language – Tax Exempt

The [Bonds, Notes, Certificates, Borrower Note - *conform to defined terms] may be [prepaid, redeemed - *Use Applicable Language] in whole, or in part, on [any date -*Use for Fixed Rate Transactions][at the end of any Interest Rate Period - *Use For Variable Rate Transactions], with three (3) days prior written notice to the [Bondholder, Noteholder, Certificate Holder, Bank, Lender - *conform to defined terms] by payment in an amount equal to the principal amount to be [prepaid/ redeemed - *Use Applicable Language] plus accrued interest thereon to the date of [prepayment/redemption - *Use Applicable Language] plus the Prepayment Fee. For purposes hereof, the Prepayment Fee will be the sum of fees calculated separately for each Prepaid Installment, as follows:

(i) The Bank will first determine the amount of interest which would have accrued each month at the Taxable Equivalent Rate for the Prepaid Installment had it remained outstanding until the applicable Original Payment Date, using the interest rate applicable to the Prepaid Installment under this Agreement.

(ii) The Bank will then subtract from each monthly interest amount determined in (i), above, the amount of interest which would accrue for that Prepaid Installment if it were reinvested from the date of prepayment or redemption through the Original Payment Date, using the Treasury Rate.

(iii) If (i) minus (ii) for the Prepaid Installment is greater than zero, the Bank will discount the monthly differences to the date of prepayment or redemption by the Treasury Rate. The Bank will then add together all of the discounted monthly differences for the Prepaid Installment.

The following definitions will apply to the calculation of the Prepayment Fee:

(i) "Original Payment Dates" mean the dates on which the prepaid or redeemed principal would have been paid if there had been no prepayment or redemption. If any of the principal would have been paid later than the end of the fixed rate interest period in effect at the time of prepayment or redemption, then the Original Payment Date for that amount will be the last day of the interest period.

(ii) "Prepaid Installment" means the amount of the prepaid or redeemed principal which would have been paid on a single Original Payment Date.

(iii) "Taxable Equivalent Rate" means the interest rate per annum derived from the following formula: [interest rate on the Bond, Note, Certificate, Borrower Note - *Use Applicable Term] divided by the difference of (1 minus the Maximum Corporate Income Tax Rate). The "Maximum Corporate Income Tax Rate" is the highest marginal federal income tax rate charged to U.S. corporations in effect at the time of the prepayment calculation. The "Maximum Corporate Income Tax Rate" is currently 35% (or 0.35 in numerical terms).

(iv) "Treasury Rate" means the yield on the Treasury Constant Maturity Series with maturity equal to the Original Payment Date of the Prepaid Installment which are principal payments (calculated as of the [date of redemption/prepayment -*Use Applicable Language] in accordance with accepted financial practice and rounded to the nearest quarter-year), as reported in Federal Reserve Statistical Release H.15, Selected Interest Rates of the Board of Governors of the Federal Reserve System, or any successor publication. If no maturity exactly corresponding to such Original Payment Date appears in Release H.15, the Treasury Rate will be determined by linear interpolation between the yields reported in Release H.15. If for any reason Release H.15 is no longer published, the [Bondholder, Noteholder, Certificate Holder, Bank, Lender, *conform to defined terms] shall select a comparable publication to determine the Treasury Rate.

CITY OF HIALEAH
CITY ATTORNEY'S OFFICE

MEMORANDUM

TO: Mayor Carlos Hernandez, and
Members of the Hialeah City Council

FROM: William M. Grodnick, City Attorney WMG

DATE: July 24, 2011

RE: Recommendation of Selection Committee-RFEI-2010/11-0210-00-006 Refunding of 1999 Florida Municipal Loan Council $30,000,000 Revenue Bond

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Report and Recommendation of the Selection Committee

On July 20, 2011, the majority of the Selection Committee comprised of Frederick H. Marinelli, Director of Grants and Human Services and Alex Vega, Director of the Office of Management and Budget (OMB) convened to discuss and make recommendations for Request for Expressions of Interest (RFEI) 2010/2011-0210-00-006 Refunding of 1999 Florida Municipal Loan Council $30,000,000 Revenue Bond. Committee Member Vivian Parks, Finance Director, was unable to attend due to her work schedule. Also in attendance was William Grodnick, City Attorney. The Committee met in the Third Floor Conference Room, 501 Palm Avenue, Hialeah, Florida at 2:45 p.m. On July 24, 2011 in the Third Floor Conference Room at 1:30 a.m., the entire Selection Committee reconvened. The City Attorney attended the meeting.

Pursuant to a duly advertised Request for Expressions of Interest, eight letters of interest received by the City were opened on July 15, 2011: Bank of America, TD Bank, Regions Bank, BB&T Government Finance, JPMorgan Chase Bank, N.A., Morgan Keegan & Co, Inc., Parkland Financial Advisors, Raymond James & Associates, Inc., Regions Bank, and Wells Fargo Bank, N.A.

The Committee members were advised that the Selection Committee would the letters of interest involved a variety of different options, including a bank loan (three banks), a bond (4 banks and financial institutions) and private financing (one company). The City reviewed the legal fees associated with the bank loans verses bond or private financing and realized that the fees for bank loans ranged from $5,000 to $15,000 whereas the legal fees for the bond and private financing transactions ranged from $51,713 to $300,000.

The Committee was also informed that the 1999 $30 million dollar revenue bond for road improvements had approximately 8 years remaining and the current interest rate was 5.5%, which represented an annual amortization payment of $2,448,703. The Committee, after extended discussion, decided that the best alternative was to obtain a bank loan to pay-off the loan with a new loan at a lower interest rate, without extending the date of the final payment. Upon review of the letters of interest, the Committee agreed that the Bank of America financing for 7½ years (15 semi-annual payments) at an estimate 2.720% interest, coverage of issuance costs and capitalized interest for three years would allow for payment of reduced interest. The principal sum of the new loan would be in the amount not to exceed $16,650,000.

Accordingly, the Selection Committee, based on the foregoing reasons, hereby recommends that the City enter into a new loan with Bank of America at an estimate 2.720% interest for to refund the 1999 Florida Municipal Loan Council $30 million revenue bond that carries at 5.5% interest rate in an amount not to exceed $16,650,000.

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